1943 **File No.** G.J.L. II/43

Legal Department

B **BRANCH**

Subject:—

Rules and Notifications under the Govt. of India Act, 1935

P 18/E)

File No G.J.L. II/43

41-B

Office of the R.L.A.

Assistant Secretary, Political and Services Department's objection at A on p.28 to the draft at p.23 ante is far from clear. The opening words in draft regulation (b) (i) at p.23, namely : "Save as provided in sub-clause (ii) " clearly remove temporary appointments to posts in the Subordinate Secretariat Service from the purview of "(b)(i)" and therefore no ambiguity of any kind is likely to arise in the construction of the draft regulation. If however the Political and Service Department agrees to the draft sent herewith which Mr. Chitnvis Senior Superintendent, has prepared in consultation with the Assistant Secretary, Political and Services Department, it may be substituted for the one at p.23. It is to be hoped that the Political and Services Department will not interpret the expression "one year in any other case" in Mr. Chitnvis 's draft regulation (b)(ii) as including posts and services mentioned in the Annexture.

Sd/- P.N.M.
2/1.

Remembrancer of Legal Affairs.

U.R. to P and S.D. No. 39 dated the 4th Jan.1943.

4-Cs.

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12/7.

Revised draft amendment.

"(b) temporary appointments to all other posts and services for a period not exceeding or not likely to exceed ---

(i) four months, in the case of posts in the Subordinate Secretariat service ((Ministerial Branch) including the subordinate staff in the Directorate of Information, the clerical staff in the Office of the Oriental Translator to Government and the staff of the Record Office, if no candidate from the select list prepared by the Public Service Commission is available for appointment; or

(ii) one year in any other case."

4-Cs.

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The Bombay Civil Services (New Rates of Pay) Rules purport to be made under clause (b) of sub-section 241 of the Government of India Act, 1935. Secion 241 does not require that the rules made thereunder should be published in the Official Gazette. It is not therefore necessary to issue any notification as proposed at page 407 ante. It would be sufficient if they are published in the Financial Publication and notified to the public as proposed at page 417 ante. Indeed the Bombay Civil Services Rules do not appear to have been published in the Official Gazette. They were published in the Financial publication of the Government of Bombay, No.V and should serve as a useful precedent in the present case. The rules may have the preamble as already proposed at page 1 of the New Financial Publication with the modification that the new rules are made in supersession of the rules published in Government Notification, Finance Department No.150/33/B, dated the 15th October 1936.

Id/- P.N.M.
25/1.

Remembrancer of Legal Affairs.

U.R. to F.D. No. 608, dated the 25th January 1943.

2-Cs.

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It will be necessary to consult the Public Service Commission and the High Court before Government issues the addition to rule 36 as proposed at p. 33 ante.

2. As regards rule 36 in appendix C to the Bombay Civil Services Classi-fication and Recruitment Rules, attention is ~~in~~invited to R.L.A's opinion No. 5242 dated 26th June 1942 (p.13 ante), No.437-Confl.dated 6th October 1942 (pp.23-24 ante) and No.9784 dated 7th December 1942 (pp.31-32 ante). It was pointed out in the last opinion that if the P.& S.Deptt. were not able to say definitely whether the existing rule 36 in Appendix C was issued after following the procedure laid down in section 255(1) of the Government of India Act, 1935, it would be desirable to re-issue the said existing rule also along with the addition now proposed after consultation with the Public Service Commission and the High Court. However it appears from the correspondence contained in the H.D. file 8278/3.....that before rule 36 was issued under section 255(1) of the Government of India Act, 1935, both Public Service Commission and the High Court were duly consulted. (see the H.D. letter No. 8278/3-A dated 17-5-1937, letter from the Public Service Commission No.19/499 dated 31-5-37, and letter from the High Court No.1476 dated 3-6-37). In the Government letter No.8278/3-A dated 30-3-38 issued after the receipt of the High Court's letter of 3-6037, Government specially asked the High Court whether the then existing rules in Appendix D to the Bombay Civil Services Recruitment Rules (which correspond to rule 36 in Appendix C to the Recruitment Rules issued in 1939) regarding the method of recruitment to, and the standard of qualifications for, the posts of Subordinate Judges should be confirmed for the purposes of section 255(1) of the Government of India Act, 1935. In reply to this letter the High Court by its letter dated 16-8-1938 sent its own draft of rules under section 255(1). The rules were then issued in G.N. , P. & S.D. No. 1586/34 dated the 5th August 1939. It would thus appear that rule 36 was made in accordance with the provisions of section 255(1) and there is no reason to doubt the statement made by the ~~x~~ Public Service Commission in its letter of 27th March 1942 at pp.1-3 ante that the rule has been made thereunder.This being the position, it is not necessary to reissue rule 36.

Id/- P.N.M.
22/2/43.
Remembrancer of Legal Affairs.

U.R. to H.D. No. 1396, dated 23rd February 1943.

4 cs. | M.W. | 12.7

Office of the R.L.A.

The question referred to the R.L.A.for consideration is whether under rule 55 of the Civil Services(Classification Control and Appeal) Rules, and enquiry is necessary before reverting an officating officer to his substantive post whether by way of punishment or on account of unsuitability.

2. Rule 55 of the Civil Services(Classification,Control and Appeal) Rules provides that no order of dismissal or reduction shall be passed on a member of a Service (other than an order based on facts which have led to his conviction in criminal court)unless he has been informed in writing of the grounds on which it is proposed to take action, and has been afforded an adequate opportunity of defending himself. (See sub-section (3) of section 240 of the Government of India Act, 1935). Reduction to a lower post or time-scale, or to a lower stage in time-scale is one of the penalties provided for in rule 49 of the said rules which may be imposed for good and sufficient reasons upon members of (1) the All India Services (2) the Central Services Class I,(3) the Central Services Class II, (4) the Provincial Services, and (5)the Specialist Services. Similarly, under rule 33 of the Bombay Civil Services Conduct, Discipline and Appeal rules, reduction to a lower post on a fixed pay or/time-scale or to a lower stage in a time scale is one of the penalties which may for good and sufficient reasons be imposed upon any member of subordinate services. These rules contemplate reduction of an officer from the permanent post he holds to a lower post and not reversion from an officiating post to which he has no right to his substantive post. If therefore any officer is reverted for any reason whatsoever from an officiating post to a lower post which he substantively holds there is no reduction of the officer within the meaning of rule 49 of the Classification, Control and Appeal Rules or rule 33 of the Civil Services Conduct, Discipline and Appeal Rules and he would not be entitled to the benefit of the statutory provisions of rule 55 of the Civil Services (Classification Control and Appeal)Rules. The view taken by A(R) in his note dated 23rd January 1943 at page 19 ante is correct,

Id/- P.N.M.
3/3.

Remembrancer of Legal Affairs.

U.R. to R.D. No. 113-Confl. Dated the 3rd March 1943.

4-Cs./M.V.V./12/7.

Office of the R.L.A.

These papers are sent to the R.L.A. for scrutiny of the draft notification at page 4 ante. The draft notification purports to add a new clause to sub-rule (1) of rule 4 of the Contributory Provident Fund Rules (Bombay) to the effect that the rules shall apply to the permanent members of the trained staff of the nursing establishments of the Cama and Albless Hospitals and also to the members of the nursing staff of the said Hospitals who cannot be appointed substantively to their posts by reason only of the ban on confirmation.

2. Rule 4(1) of the Contributory Provident Fund Rules (Bombay) provides inter alia that the rules shall apply to every non-pensionable servant of the Government belonging to any of the services (whether Provincial, Specialist or Subordinate) under the control of Government who may be admitted by Government to the fund after the rules come into force. It will appear from rule 29 on page 558 of the Bombay Civil Medical Code and rule 2(c) on page 561 of the same Code that the members of the nursing establishments of the Sassoon and the Cama and Albless Hospitals were admitted to the Fund subject to the condition of the sanction of Government in respect of each nurse. On the recommendation of the Inspection Committee of the Bombay Nurses, Midwives and Health visitors Council the Surgeon General moved Government to make payment of subscription towards the Fund compulsory for all permanent members of the trained staff of the hospitals. After due consideration Government passed orders in Government Resolution, General Department, N.9662, dated 7th May 1942 that subscription to the Contributory Provident Fund (Bombay) should be made compulsory for the permanent members of the trained staff of the nursing establishments of the Sassoon Hospitals Poona and the Cama and Albless Hospitals, Bombay. What Government should have done was to pass orders admitting all permanent members to the Fund and then by the operation of sub-rule(2) of rule 4 such members would have been compelled to subscribe to the Fund. However these orders can be construed as admitting all the permanent members to the Fund, thus doing away with the necessity of obtaining sanction in each individual case. As the proposal now is to make it compulsory also for the members who cannot be appointed substantively to their posts by reason only of the ban on confirmation, to join the Fund, all that appears necessary is to pass

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orders admitting those members also to the Fund. As soon as Government passes such orders those members will have to subscribe to the Fund under sub-rule(2) of rule 4 of the Contributory Provident Fund Rules (Bombay). In view of the position it does not appear necessary to amend the Rules as proposed in P. and S. Department notification at page 4 ante.

Id/- P.N.H.
9/3.

Remembrancer of Legal Affairs.

U.R. to P & S. Deptt. No. 1719, dated the 10th March 1943.

4-Cs.

M.V.V.
13/7.

Office of the R.L.A.

Rules 39-47 contained in Appendix C to the Bombay Civil Services Clasification and Recruitment Rules prescribe the qualifications of candidates for and the methods of recruitment to the Provincial Services, namely, the Bombay Medical Service and the Bombay Public ~~Hxkk~~ Health Service. In view of the position stated in R.L.A's opinion 4186, dated the 21st May 1942 these rules are non-statutory rules. Draft rule 3(b) at p. 153 ante which corresponds to rule 4 as finally settled by G.D. in the linked file is likewise non-statutory. The rule inter alia provides that notwithstanding anything contained in any rules made by Government it will be open to Government to make temporary appointments for the duration of the war at their discretion by nomination of persons not already in the service to which the vacancy pertains. It will therefore be open to the Government under the rule to appoint temporarily any person at their discretion, notwithstanding that such person does not possess any of the qualifications prescribed in rules 39-47 in Appendix C.

Id/- P.N.M.
11/5.

Remembrancer of Legal Affairs.

U.R. to G.D. No. 3488, dated the 12th May 1943.

4-Cs.

M.V.V.
13/7.

Office of the R.L.A.

* copy attached.

Attention is invited to Government of India's *letter No. 55-7(33)/42 dated 5th October 1942. Paragraph 2 of that letter points out that section 92(1) of the Government of India Act, 1935 cannot be used to give retrospective effect to any enactment. Although the present letter of the Government of India (page 1 ante) asks the Provincial Government to apply the Finance Act with retrospective effect the first letter seems to have been addressed after consulting the Legislative Department of the Government of India and it would be safer to follow the view taken in that letter.

2. It may be pointed out that the Government of India similarly asked the External Affairs Department to apply the Act to British Bulchistan (page 2 ante) but that Department has not applied it with retrospective effect. (Vide External Affairs - Department Notification No. 52-F dated 21st April 1943). The Government of Bombay may similarly apply the Act to the partially excluded areas, that is to say, without specifying the date as proposed in the draft notification at page 4 ante. The draft at page 4 ante is amended accordingly.

Id/- P.N.M.
18/5.

Remembrancer of Legal Affairs.

U.R. to F.D. No. 3641, dated the 18th May 1943.

4-Cs.

M.V.V.
13/7.

Office of the R.L.A.

The question is whether in view of the regulations and under sub-section(3) of section 266 of the Government of India Act, 1935, it is necessary for the Commissioner who reverts a Mamlatdar from an officiating post to a substantive post to consult the Public Service Commission. Attention is invited in this connection to R.L.A's opinions Nos 3940 dated 11th April 1939 and 9497 dated 23rd September 1939. In those opinions the R.L.A. has held that the plaind meaning of the words used in regularion 4(which corresponds now to the existing regulation 10) appears to be that in disciplinary matter dealt with by any authority other than the Provincial Government e.g. the Commissioner in cases relating to Mamlatdars, consultation with the Public Service Commission is not necessary. Regulation 15 provides inter alia that it shall not be necessary for the Public Service Commission to be consulted in any disciplinary matter relating to the posts and services specified in the Annexture to the Regulations. Item 21 in the Annexture refers to services and posts to which appointments are made by authorities subordinate to the Provincial Government. It is no doubt true that the specific exclusion of the posts of Mamlatdars from this item raises douts whether the Commission can take disciplinary action against a Mamlatdar without consulting the Public Service Commission. But it seems to me that regulation 15 must be so construed as to harmonise with regulation 10. The effect appears to be that the Commissioner need not consult the Public Service Commission in taking disciplinary action against a Mamlatdar, but that there Government either as an original authority or as an appellate authority deals with such disciplinary action, Government ought to consult the Public Service Commission. Unless therefore the regulation is more clearly worded, as already advised in R.L.A.'s opinion No. 9497 dated 23rd September 1939, it would not be unreasonable to hold that in the present case it was not necessary for the Commissioner to consult the Public Service Commission.

Id/- P.N.M.
25/5.
Remembrancer of Legal Affairs.

U.R. to R.D. No. 235-Confl. dated the 25th May 1943.

4-Cs./M.V.V./13/7.

Office of the R.L.A.

A revised draft of the rules is sent herewith.

2. Attention is invited to A(E)'s note at pp.54-55 ante. As the rules are to be framed pending the decision of the Federal Court under section 241(1)(b) of the Government of India Act, 1935, the preamble has not been touched.

3. Rule 2(ii).- Ruel 2(ii) of the G.D. draft on page 39 ante seeks to define 'approved war service' by reference to a Government Resolution. This is not very happy in a statutory rule. The definition may be on the lines of rule 2(4) of the Bombay Civil Services (War Service Personnel) Recruitment Rules, 1942. This will enable Government to amend the defintion by passing Government Resolutions instead of by further statutory amendments. Government may pass a Government Resolution on the lines of Government Resolution, Political & Services Department, No.4083/34, dated the 1st March 1943 for the purpose of the present rules.

4. Revised rule 3 combines G.D. rules 3,4 and 5.

5. Revised rules 4 and 5 correspond to G.D. rules 6 and 7.

6. Revised rule 7 correspondents to G.D. rule 8. It is presumed that the vacancies in the Subordinate Medical and Public Health Services to be filled after the end of the war are substantive vacancies as in the case of Provincial Services. This has been made clear.

7. Revised rule 6 corresponds to G.D.rule 9. It is for consideration whether provision is not necessary for filling temporary vacancies in the Subordinate Medical and Public Health Services.

Id/- P.N.M.
18/6.

Remembrancer of Legal Affairs.

U.R. to G.D. No. 4337, dated the 19th June 1943.

4-Cs.

M.V.V.
13/7.

Office of the R.L.A.

Schedule A appended to Government Notification No. 4874/33(e), dated the 22nd May 1940, contains a bond and security form. According to this form a revenue officer before he is appointed to his office binds himself to pay to the Government of Bombay the amount of any loss or defalcation in accounts and in case of default to forfeit to the Government a certain sum. According to the form the surety also binds himself to forfeit to the Government of Bombay a certain sum. The Accountant General objects to this form on the ground that under section 175 (3) all contracts are to be expressed to be made by the Governor of the Province. He therefore suggests that the form should be amended on the lines of the security bond in Appendix I-B to Financial Publication No. I by substitution of the words "Governor of Bombay" for "Government of Bombay".

2. It is not clear how the provisions of section 175(3) of the Government of India Act, 1935, necessitate any change in the form as suggested by the Accountant General. The implication of the provisions of section 175(3) have been explained in the H.D. Circular No. 5940/3-III, dated 22nd October 1941 (which was issued in consultation with the R.L.A.). It is made clear in the Circular that where an offer is made or accepted in a writing signed on behalf of Government it should be expressed to be made or accepted by "the Governor of Bombay". No such question arises in this case. The person concerned signs and binds himself to pay and forfeit to Government certain sum and no part of the writing is executed or signed on behalf of Government. There is a similar form of bond in Schedule D to the Bombay Land Revenue Code. According to that form as it stood prior to 1st April 1937 the person concerned had to bind himself to forfeit to the "Secretary of State for India in Council" a certain sum. The Government of India (Adaptation of Indian Laws) Order, 1937, substituted "Crown" and not the "Governor of Bombay" for "Secretary of State for India in Council" The expression "Crown" , "Crown for the purposes of the Government of Bombay", and"the Government of Bombay" are all equivalent for the vesting of the property agreed to be forfeited under the bond in the present case (See section 175(2) of the Government of India Act, 1935) It

P.T.O.

would therefore appear that no amendment of the form in Schedule A to the R.D. Notification No. 4874/33(e), dated ~~22~~ 22nd May 1940, is necessary.

IId/- P.N.M.
8/9.

Remembrancer of Legal Affairs.

M.R. to RR.D. No. 6667, dated the 9th September 1943.

4-Cs.

M.V.V.
23/7.

Office of the R.L.A.

A draft nitification embodying the regulation as proposed at p.12 ante is sent herewith.

2. As regards the amendment proposed to be made in regulation I-E it is not necessary to substitute the words "that war" for the words "the war

Id/- P.N.M.

Remembrancer of Legal Affairs.

U.R. to P. & S.D. No. 1622 dated the 5th March 1943

4-Cs.

M.V.V.
13/7.

NOTIFICATION.

Political and Services Department,
Bombay Castle, 1943.

No. 1763/34.- In exercise of the powers conferred by sub-section (3) of section 266 of the Government of India Act, 1935, the Governor of Bombay in his discretion is pleased to amend the regulations published in Government Notification in the Political and Reforms Department, No. R/293-III, dated the 5th April 1937, as follows, namely:-

The Government of India Act,1935.

After regulation 1-E of the said regulations, the following new regulation shall be inserted, namely:-

"1-F. Notwithstanding anything contained in clause (b) of regulation 1, it shall not be necessary to consult the Public Service Commission in regaard to the ~~Rx~~ reappointment in connection with a war emergency, of ~~a~~ a retired servant of the Crown for a period not exceeding the duration of the war and one year ~~the~~-reafter, to :-

(i) a permanent post in the service from which he retired, or

(ii) a temporary post created as an addition to the cadre of that service, or

(iii) any other temporary post the duties of which are similar to those normally discharged by members of that service."

By order of the Governor of Bombay,

Secretary to Government.

4-Cs.

H.V.V.
13/7.

Office of the R.L.A.

The question referred to the R.L.A. for opinion is whether under Rule 360-B of the Bombay Civil Services Rules it is obligatory to pay to Mr. Sparkar Soparkar and other officers one-half of the amount of fees already recovered from the Government of India on account of work done by them for that Government and credited to the Provincial Government.

2. Clause (a) of rule 360-B of the Bombay Civil Services Rules provides that the services of a Consulting Surveyor to Government and officers of his Department may be made available for out side work on behalf of the Government of India. Para.(1) of the clause prescribed the scale in accordance with which fees for valuation of property for compulsory acquisition etc. shall be recovered. Clause (b) lays down that the fees received by an officer under clause (a) (I) shall in the first instance be credited to Government and the officer concerned should draw from the treasury one-half of the amount deposited, which he is permitted to retain. Rule 360-B is made under clause (b) of sub-section (2) of section 241 of the Government of India Act and has therefore statutory force. Clause (b) of that rule provides for no exception or qualification. In virtue of that clause the officers concerned would be entitled to retain one-half of the amount credited to the Provincial Government. Under sub-section (5) of section 241 of the Government of India Act no rules made under that section shall be construed to limit or abridge the power of the Governor to deal with a case of any person serving His Majesty in civil capacity in India in such manner as may appear to him to be just and equitable, but the proviso to the subsection lays down that where any such rule is applicable to the case of any person, the case shall not be dealt with in any manner less favourable to him than that provided by that rule. In view of this explicit provision contained in the proviso it will not be possible to take away from the officers concerned the benefit conferred on them by clause (b) of rule 360-B of the B.C.S.Rs.

Id/- P.N.M.
11/9.

Remembrancer of Legal Affairs.

U.R. to G.D. No. 6125, dated 13th September 1943.

4-Cs.

M.V.V./13.7

Office of the R.L.A.

Subject to the following remarks the amendments in the draft notification at pages 57 to 108 ante marked with a plus sign in red, as amended, are in order.

(1) It would be desirable to transpose the proposed foot-note to new entry 46B on page 58 ante as a note to that entry.

(2) It is not necessary to substitute a fresh clause (b) for the existing clause (b) of rule 29 of Appendix C as proposed by P. & S.D. on page 67 ante. All that is necessary is to delete the portion beginning with "and who" and ending with "Superintendent of Excise". The clause has been amended accordingly. It is presumed that the substitution of the word "proved" for the word "approved" occurring in the existing clause (b) of rule 29 is intentional. The word "proved" has therefore been substituted for the word "approved"

(3) It appears desirable to substitute "may" for "shall" in the proposed rule 118 on page 79 ante.

(4) The new clause (b) of rule 27 in Appendix X (page 84 ante) which it is proposed to substitute for the existing clause (b) provides for the period prescribed for the sub-service departmental examination being extended by the Collector and the Commissioner and also for the candidate being exempted from passing the examination. In view of the provision in clause (b) of rule 27 granting exemption to candidates from passing the examination it would be necessary to make a change in clause (c) of said rule. The P. & S.D. should verify whether the insertion of the expression "or getting an exemption from the Commissioner under clause (b) " after the word "examination" in clause (c) would be sufficient.

Sd/- P.N.M.
2/11.

Remembrancer of Legal Affairs.

U.R. to P. & S.D. No. 7969, dated the 2nd November 1943.

4-Cs.

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13/7.

Office of the R.L.A.

A slightly revised draft notification is sent herewith.

2. It is presumed that sub-para(4) of G.R.P. & S.D.No. 4083/34-IV dated 25th August 1943 permits filling reserved vacancies in Subordinate Services if applications have already been invited beefore 1st September 1943. The new proviso to revised rule 8 makes this clear. If this presumption be wrong, the said proviso may be omitted.

3. In the proposed new rule 8 reference is made by the P. & S.D. to unreserved vacancies in the Judicial Department. It is presumed that by 'Judicial Department' the P. & S.D. means the Subordinate Judicial Service. Revised rule 9 accordingly refers to the Subordinate Judicial Service.

Sd/- P.N.M.

Remembrancer of Legal Affairs.

U.R. to P & S. D. No. 8561, dated the 19th November 1943.

4-Cs.

M.V.V.
13/7.